

15 MAY 2007



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In re Application of :  
RICHARD KABZINSKI et al. :  
Application No.: 10/551,674 :  
PCT No.: PCT/AU04/00387 : DECISION ON  
Int. Filing Date: 29 March 2004 :  
Priority Date: 28 March 2003 : PETITION  
Attorney's Docket No.: 60136-0011 :  
For: Security System and Method for Computer Operating Systems : UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed 03 October 2006, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Russell Powers. The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 29 March 2004, applicants filed international application PCT/AU04/00387, claiming a priority date of 28 March 2003.

On 28 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application, the requisite priority document, a preliminary amendment and, a surcharge for late filing of the oath or declaration. An oath or declaration was not submitted.

On 23 May 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/905) indicating that an oath or declaration must be filed. The notification set a two-month time limit in which to respond.

On 03 October 2006 applicant filed the present petition accompanied by a petition fee, a three-month extension fee, an oath executed by inventors Richard Kabzinski and Michael A. Hearn and a declaration by Mr. Christopher Palermo.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor. A review of the papers indicates that applicants have satisfied items (3) and (4).

As to item (1), applicants have submitted an incorrect fee of \$130.00 under 37 CFR 1.17(h). The correct fee for a petition filed under 37 CFR 1.47(a) is \$200.00 under 37 CFR 1.17(g). Based on applicant's authorization filed with the instant petition on 03 October 2006, an additional amount of \$70.00 will be charged to Deposit Account No. 50-1302.

As to item (2), the evidence submitted to show that inventor Russell Powers has refused to sign is insufficient. The declaration by Mr. Palermo indicates that Mr. Steven Starkie mailed a letter to inventor Russell Powers without receiving any response. The copy of the letter mailed by Mr. Steven Starkie shows that the letter was mailed on 23 May 2006. A copy of the mail return receipt shows a delivery date of 27 May 2006. The letter identifies the application by title and serial number and, includes a "complete copy of the application as filed." The letter also indicates that the mailing includes declaration and assignment forms to be signed by inventor Russell Powers.

However, the declaration by Mr. Palermo is not a first-hand statement from the person who tried to contact non-signing inventor Russell Powers. Mr. Steven Starkie has not indicated that he has any firsthand knowledge of the facts. Instead the declaration of Mr. Palermo has offered an explanation of the facts and a copy of the letter purportedly sent to Russell Powers. In the present instance, a statement from Mr. Steven Starkie should be presented.

CONCLUSION

Applicant's petition to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Russell Powers, is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



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